

PROTESTS -- THE GOVERNMENT'S PERSPECTIVE

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WE DON'T TAKE PROTESTS PERSONALLY

- Offerors have a right to protest
 - Should be informed, intelligent decision
- Opportunity to reassess agency actions
- Corrective action when appropriate
- Defend award vigorously when appropriate
- Never retaliate against offeror for protest

CONSEQUENCES FOR AGENCY AND PROTESTER

- Real costs in time/money for both
- May delay start of performance
- If protest sustained:
 - Agency normally pays legal costs to successful protester
 - Bid & proposal costs usually not reimbursed
 - No decision on who gets award
 - Government must correct errors – delay in award
 - Additional costs for revising proposals
 - Procurement may be cancelled (lack of money; incumbent completes or nearly completes performance during delay)

HOW TO AVOID PROTESTS

- Communications with offerors throughout process (beginning before RFP issued)
- Fair treatment of all offerors in evaluation and source selection
- Debriefings (pre-award and post-award)

PURPOSES OF DEBRIEFINGS

- Inject more transparency into process
 - Transparency inevitably limited since involves confidential information from offerors
 - Lift the veil as much as possible
- Improve future proposals of offerors
 - Fully explain evaluation of debriefed offeror proposal
- Explain rationale for award decision
 - Not everyone can get award
 - Understand basis even if you don't agree

DOE POLICY ON DEBRIEFINGS

- Debrief promptly after competitive range or award decision
- More uniformity in debriefings throughout agency
- Disclose as much as possible within legal constraints
- Stretching the limit of what is disclosed – open book debriefings in selected acquisitions

INFORMATION DISCLOSED (AT MINIMUM)

- Strengths/weaknesses/deficiencies of debriefed offeror
- Overall evaluated cost/price of debriefed offeror and awardee
- Summary of rationale for award
- Reasonable responses to relevant questions
 - Solicit questions in advance
 - Will not argue about evaluation/award

PROHIBITED FROM DISCLOSURE

- Point-by-point comparisons with other proposals
- Contents of other proposals – anything that could not be disclosed under FOIA
- Names of individual references for past performance information